

JUVENILE DELINQUENTS AND CHILD WELFARE

PUBLIC HEALTH AND WELFARE TECHNICAL BULLETIN

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APO 500

SEPTEMBER 1948

1. History

a. The Japanese Diet on 5 July 1948 passed a new Juvenile Law which replaces the former Juvenile Court Law (Law No. 42 of 1922). The new law will go into effect on 1 January 1949. This new law is important to welfare administrators since it places additional responsibilities on the child welfare officials.

b. In the past the system for handling juvenile delinquents in Japan has been extremely complicated. A juvenile who violated the provisions of laws or ordinances, and who was either apprehended by the police or referred to the authorities by his parent or guardian, was brought to one of the 10,000 officers of the Judicial Protective Society, a semi-official organization under the control and supervision of the Minister of Justice (now Attorney General's Office). At the office of this society decision was made whether to refer the juvenile to welfare organizations for supervision and rehabilitation, or to the District Procurator's Office, where the procurator would decide if the juvenile should be treated as a criminal offender. If the juvenile was referred to a procurator's office or if he was brought in directly to a procurator, the juvenile who had committed a serious offense was held for trial in the District Court, while the minor offender was referred to the so-called "Juvenile Court" (Shonen Shinpan Jo). The Juvenile Courts were actually not part of the judicial system but were probational departments of the Procurator's Office, established only in the largest cities and acting as centers for the surrounding districts. The Juvenile Court was actually a commission which was part of the Attorney General's Office and staffed by officials of that office. The defects of this system were the lack of supervision of the Judicial Protective Society by the procurator, inadequate supervision of the institutions and homes to which the juveniles were committed, and no check upon the decisions made by the procurators.

2. The Family Court

An important provision of the new law is the granting to the Family (Domestic Relations) Court jurisdiction over juveniles rather than to a separate Juvenile Court. By placing jurisdiction over juveniles in the Family Court, the facilities of a special court can be provided to children in all parts of Japan and not merely in those areas where a separate Juvenile Court has been established in the past.

The Family Court will be created through amendment of the Court Organization Law. This court will be separate and independent and of the same status as the District Court, inferior to the High Court, with appeals being made to the High Court from decisions of the Family Court. The Family Court will have two branches; (1) the Juvenile Court Branch, with jurisdiction over juveniles and adults as provided by the terms of the new Juvenile Law; and (2) the Domestic Relations Court, with jurisdiction the same as that now exercised by the Domestic Relations Court Branch of the District Court. The Family Court will come into effect on 1 January 1949.

3. Jurisdiction over Juveniles

a. Legal Provisions

The jurisdiction of the Juvenile Court Branch of the Family Domestic Relations Court is set forth in Article 3 of the new Juvenile Law which provides that: "The Family Court shall have jurisdiction over the following juveniles:

(1) Any juvenile who is alleged to have committed a crime or any juvenile under 14 years of age who is alleged to have violated any criminal law or regulation:

(2) Any juvenile of whom there is apprehension that he may commit a crime, in view of his character or surrounding circumstances, because of the existence of the following reasons:

- (a) He habitually refuses to submit himself to the reasonable control of his guardian.
- (b) He repeatedly deserts his home without good reason.
- (c) He associates with persons of a known criminal or immoral nature, or frequents any place the existence of which is in violation of law.
- (d) He habitually acts so as to injure or endanger his own morals or those of others.

The Family Court may put a juvenile under fourteen years of age to trial who comes under item (2) of the preceding paragraph, only when the prefectural governor or the head of the Child Welfare Center transfers him to the court."

b. Application of the Law

The Family Court has jurisdiction over juveniles (persons under 20 years of age) who fall into two categories: (1) juvenile offenders - those who are alleged to have committed a crime, or who have committed acts which

would constitute crimes if the juveniles were of an age where they could commit a crime: (2) juvenile delinquents - those of whom there is apprehension that they may commit a crime in view of their character or surrounding circumstances. Juveniles in the second category, under fourteen years of age, are subject to the jurisdiction of the Family Court only when referred to the court by the welfare authorities.

Under the new Juvenile Law, as well as the previous law, jurisdiction of the court is more limited than in Juvenile Courts in the United States. It is expected that needed governmental child welfare services in Japan will be provided by the Child Welfare Sections of Prefectural Departments of Welfare and by Child Welfare Centers (Jido Sodansho). Through such a division of function, it is hoped that necessary services can be provided with a minimum of duplication and overlapping of activities of the court and the child welfare program. The court's jurisdiction is limited to delinquent children who are actually charged with the violation of a criminal statute (Item 1 of Article 3) except for certain children who are delinquent or in danger of becoming delinquent (Item 2 of Article 3). The court is not granted jurisdiction of children under the age of 14, other than those alleged to have violated any criminal law or regulation, unless transferred to the court by the prefectural governor or head of a Child Welfare Center.

c. Analysis of Jurisdiction

The effect of the Juvenile Law is that in general the Child Welfare authorities have responsibility for all children under the age of fourteen (14). The only exception to this policy is a child under fourteen who has committed an act which is in violation of a criminal statute. The Juvenile Court is granted jurisdiction of this type of child. It is to be noted that under Japanese Criminal Law it is not possible for a child under the age of fourteen to be tried on a criminal charge. There is some question in Japan whether such children can best be provided for through court action or by services provided by the child welfare program.

Article 25 of the Child Welfare Law provides that "Any person who has discovered a child without a guardian or with an inadequate guardian shall report the child to the Child Welfare Center or its offices. Provided, children who come under the protective measures of the juvenile court are outside the scope of this provision." The effect of this provision is that the Child Welfare Center is prevented from giving services to a child under fourteen alleged to have violated a criminal law or regulation, unless the child is referred to the center by the court, and is prevented from serving children under 18 of whom there is apprehension that he may commit a crime. It has been suggested that Article 25 should be amended by deleting the second sentence which would give the Juvenile Court and the Child Welfare Center concurrent jurisdiction over children under 18 who are delinquent. It seems particularly important that young children be taken care of by the Child Welfare program and not by the court.

In order to insure all young children receiving the benefit of the services provided by the Child Welfare Centers it has been suggested that paragraph (1) of Article 3 of the Juvenile Law should be amended to provide that the court will have jurisdiction of "Any juvenile under 14 years of age whose acts or behavior has violated any criminal law or regulation" only when the child is referred to the court by the prefectural governor or head of the Child Welfare Center. Such a limitation would mean that all children under 14 would be handled by the Child Welfare program and would be the responsibility of the Juvenile Court only when referred by the Child Welfare Center. At the present time a child "of whom there is apprehension that he may commit a crime" may be handled by the Family Court only when transferred to the court by the prefectural governor or head of the Child Welfare Center. This means that such children will be in court only when the administrative authorities decide that court action is the best way to provide for the child. It has been suggested that the age should be increased to eighteen so that the older children will be the responsibility of the Child Welfare program and not the court unless the child is accused of conduct which is in violation of the criminal law.

In determining the jurisdiction of the juvenile court in Japan it is not advisable to merely copy the court structure found in the United States. Experience in the United States can be utilized but for several reasons the court in Japan must be different: (1) past experience in Japan has been different; (2) when juvenile courts were established in the United States public child welfare services did not exist and (3) the function of the Juvenile Court is changing with the development of public Child Welfare programs.

That the Japanese have had a different attitude toward the method of providing for delinquent children is indicated by the following quotation from an address given by Mr. T. NAMAYE, of Japan, at a child welfare conference held in Washington, D.C. in 1919: "The special feature of our Reformatory act is that the executive department, and not the judicial, is the one that places the delinquent children in the reform schools. This is because we believe the purpose of placing delinquent children in reform schools is not to punish or imprison them but to educate and improve them and to make them decent members of society."

That there is now some question in the United States concerning the effectiveness of the courts in providing for children is indicated by the following statement (Herschel Alt, "Juvenile Behavior Problems, Social Work Yearbook, 1947, pp. 266-268): "There has been a growing interest in reconsidering the place of the juvenile court in the treatment of behavior problems and delinquency. It has been felt that its structure and procedures which remain essentially judicial in character, are not adapted to an effective administration of a social treatment program. This becomes a serious practical problem where courts have assumed broad responsibilities in the child welfare field, which may include maintenance of a child-placing program as well as varied services for the treatment of behavior problems of children.

"Although the founding of the juvenile court was one of the most important steps in the establishment of a system of social treatment, to which parole, probation and indeterminate sentence were later added, the unified continuous, social and psychological treatment of the young offender is still not administratively possible in most jurisdictions.....Too much emphasis is laid upon the act rather than the individual and his needs.

"It is believed that continuity of treatment can be achieved if responsibility is centered in one administrative agency which is given the power and resources for treatment and education of the delinquent as long as he is in need of supervision of the community and the state."

4. Jurisdiction over Adults

In addition to this jurisdiction over juveniles, the Family Court has jurisdiction under Article 37 over adults who have committed certain specified offenses with regard to juveniles, such as inducing them to smoke or to drink, or violating the provisions of the Labor Standards Law relating to child labor, or Article 60 of the Child Welfare Law. However, if the Family Court desires to impose a penalty of imprisonment or graver punishment, it must transfer the case to the competent district court, since the Family Court is limited to imposition of detention (for less than 30 days) or a fine.

5. Procedure.

The court is required, when it believes as a result of notification or report, that there is a juvenile subject to trial, to order an investigation of the case by a juvenile investigator, and to make use of medical, psychological, educational, sociological and other expert advice in regard to the environment, conduct of the juvenile, his guardians or the other persons concerned.

As a result of this investigation the court may decide:

- a. That the juvenile is neither an offender nor a delinquent, and so drop the case.
- b. That the juvenile should be handled by the welfare authorities without a trial, and so transfer the case to the prefectural governor or the head of the Child Welfare Center (Article 18).
- c. That the juvenile should be subject to trial, in the Family Court.
- d. That the juvenile should be transferred to the District Public Procurator's Office for indictment and trial in the regular criminal courts, if the juvenile is 16 years old or over.

When the juvenile is transferred to the Procurator's Office, if the juvenile has been placed under the care and custody of a Juvenile Investigator, there must be indictment within ten days.

Warrants of arrests issued by the Family Court are to be executed by Juvenile investigators but the court may cause police officers to execute the warrant.

At the trial, the provisions of the new Code of Criminal Procedure apply to the conduct of all proceedings, except that the trial may be conducted in a court room or in chambers. The trial is to be conducted with "warm consideration" of the juvenile, and is not open to the public. These provisions both protect the juvenile as far as his civil rights are concerned and enable the court to act with more latitude than in an ordinary criminal trial, since the Family Court is not a criminal court and is concerned with the welfare of the juvenile delinquent as much as with the interest of the State.

6. Juvenile Detention

When the juvenile is subjected to trial in the Family Court, the court may, as a preliminary step, place the juvenile under the care and custody of a juvenile investigator, or consign him to a Juvenile Detention Home for a two-week period, renewable once. In case the juvenile has been arrested, the ruling for either one of these dispositions for care and custody must be made within 24 hours after the juvenile is brought to the court. This is in line with the provisions of the Code of Criminal Procedure relating to criminal cases. Because there are not sufficient facilities for individual Juvenile Detention Homes, Article 21 of the new Reformatory Law provides that specially separated rooms of regular juvenile reformatories may be used as Juvenile Detention Homes until 31 March 1950. In placing the juvenile under the preliminary supervision of a Juvenile Investigator, the Court may fix conditions to be followed by the juvenile or guardian, or may commit the juvenile to a suitable institution, organization or individual for guidance.

7. Disposition Prior to Trial

A provision of the new Juvenile law which is important to child welfare administration is the authority granted to the court to discharge the case by referring the child to the Child Welfare Center. Article 18 of the law provides that "The Family Court shall, when it deems it proper, upon investigation, take measures in accordance with the provisions of the Child Welfare Law (Law No. 164 of 1947) render a ruling to transfer the case to the competent prefectural governor or the head of the Child Welfare Center (Sodansho). However, this shall not apply to the cases which have been transferred from prefectural governors or heads of Child Welfare Centers."

Such a provision in the law makes it imperative that the child welfare program operate in such a manner that adequate services can be provided in each community for children transferred to the Child Welfare Center by the court.

8. Disposition Following Trial

One of the most important provisions of the new Juvenile Law is Article 24 which controls the action which may be taken by the court after a trial has been conducted. Under Article 23 the court may rule that the child does not need "protection" and in effect, dismisses the child from custody. If a "protective disposition" is advisable, however, the court may make one of three dispositions authorized by Article 24:

- (a) Place the child under the supervision of the District Youth Offender Prevention and Rehabilitation Board (IYOPAR Board - Shonen-in Kai), or
- (b) Commit the child to a Home for Juvenile Training and Education (Kyogoin) or a Protective Institution (Yogo-Shisetsu), or
- (c) Commit the child to a reformatory (Shonen-in).

The Juvenile Protection Committee is a type of organization which has existed for some time in Japan and is similar to the use of Minsei-iin under the Daily Life Security Law or Child Welfare Workers (Jido-iin) under the Child Welfare Law. Although it is not mandatory that Minsei-iin and Shonen Hogo-iin be the same person, in actual practice frequently the same person serves in both capacities. It has been estimated that about one-third of the Hogo-iin are also Minsei-iin. This means that the same person will have official responsibilities under three separate laws which has distinct advantage in that the aid available under both the Daily Life Security Law and the Child Welfare Law can be made more readily available.

The Homes for Juvenile Training and Education (Kyogo-iin) and the Protective Institutions (Yogo-Shisetsu) are operated by the Children's Bureau of the Ministry of Welfare, and the Children's Section of the prefectural Department of Welfare. By authorizing the Juvenile Court to place children in welfare institutions it is expected that certain children will benefit from the welfare service program. The reformatories (Shonen-iin) are institutions operated by the Attorney General's Office (formerly the Ministry of Justice) and are intended primarily to provide care for older delinquent children. Under the provisions of the Reformatory Law passed in 1948 it is not authorized to commit a child under fourteen to a reformatory. In other words the Juvenile Court must either place a child under fourteen under the supervision of the Juvenile Protection Committee or send him to a welfare institution.

9. Responsibilities of the Attorney General's Office

a. Legal provisions

The Attorney General's Office was established by Law No. 193, 1947, effective 15 February 1948, to replace the former Ministry of Justice.

This law creates several bureaus within the Attorney General's Office including a Correction and Rehabilitation General Affairs Bureau and a Juvenile Correction and Rehabilitation Bureau.

Concerning the responsibilities of these bureaus Article 10 of the law provides that:

"The Correction and Rehabilitation General Affairs Bureau shall administer the following matters:

1. Matters concerning planning of policies in respect to the prison affairs and the rehabilitation of offenders, and concerning adjustment of the business thereof;
2. Matters concerning prisons, houses of detention, juvenile protection offices, public reformatories and other public institutions for correction and rehabilitation of juveniles;
3. Matters concerning culture and training of the staff for correction and rehabilitation;
4. Matters concerning finger-prints of offenders;
5. Matters concerning prison affairs and rehabilitation which do not belong to other jurisdictions;

"The Juvenile Correction and Rehabilitation Bureau shall administer the following matters:

1. Matters concerning the execution of penalties and detention of juveniles.
2. Matters concerning the rehabilitation of juveniles placed under correction by the juvenile court.
3. Matters concerning the rehabilitation work for juveniles placed under correction by the juvenile court."

Article 15 of the statute provides that:

"The Attorney General shall have jurisdiction over private institutions for correction and rehabilitation which have, hitherto, fallen under the jurisdiction of the Minister of Justice, until 31st March 1949 but shall be required, from 1 January 1949, to obtain the advice of and exchange opinions with the Minister of Welfare regarding operation of such institutions, as shall be provided by Cabinet Order.

"The Attorney General shall continue to exercise the same jurisdiction over matters concerning rehabilitation of juveniles as has been

exercised by the Minister of Justice until 31 December 1948. From 1 January 1949 jurisdiction over juveniles about whom there is apprehension of delinquency will be transferred to the Minister of Welfare, except over those who have been placed under correction by the Juvenile Court.

"The Attorney General will examine the records of all inmates of the institutions mentioned in paragraph one of this article and those juveniles about whom it has been ascertained that they have committed crimes or those who have been placed under correction by the Juvenile Courts will be removed to public reformatories or other public institutions for correction and rehabilitation by 31 March 1949, by which date there are to be no private institutions used for reformatories or for correction and rehabilitation.

"Until removals mentioned in the preceding paragraph have been finished, the Attorney General, in cooperation with the Minister of Welfare, will supervise strictly all private institutions for correction rehabilitation and all private reformatories to insure maintenance of high standards of conduct and operation."

b. Relationship to New Juvenile Law

It is to be noted that the Law establishing the Attorney General's Office (Act 193 of 1947) and the new Juvenile Law complement each other and are designed to carry out the same basic idea. In the future it is expected that only those children who are committed by a Juvenile Court will be placed in institutions operated by the Attorney General's Office. Only delinquent children fourteen years of age and over can be committed to such institutions. Eventually only public institutions will be used by the Attorney General's Office to provide care for Juveniles.

